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PASS TREASURY FOR GRIFFIN

E. O. 11652: N/A
TAGS: ENRG, EINV, OECD
SUBJECT: FIRST MEETING OF INVESTMENT COMMITTEE (IME)
MARCH 3-4

REF: (A) IME(75)1
(B) CE(74)15

1. SUMMARY: INAUGURAL MEETING OF OECD INVESTMENT COMMITTEE (IME) MARCH 3-4 REVEALED BROAD SUPPORT FOR CONCEPT OF NON-BINDING OECD STANDARDS OF BEHAVIOR FOR MULTINATIONAL ENTERPRISES (MNE'S). (US AND CANADA WERE ONLY SKEPTICS.) CONSISTENT WITH XCSS AGREEMENT ON PACKAGE APPROACH TO INVESTMENT ISSUES, IT WAS AGREED THAT COMMITTEE, WITH HELP OF SPECIALLY APPOINTED WORKING GROUP, WILL SEEK TO REFINE DRAFT STANDARDS SO THAT POLITICAL DECISION ON THESE CAN BE TAKEN PARALLEL WITH THAT ON COOPERATIVE ARRANGEMENTS ON NATIONAL TREATMENT AND INVESTMENT INCENTIVES AND DISINCENTIVES. DISCUSSION OF THESE LATTER TWO TOPICS INDICATED SOME FURTHER BACKSLIDING IN DEGREE OF POSITIVE COUNTRY INTEREST IN THEM TOGETHER WITH CLEAR REAFFIRMATION BY MOST MEMBERS THAT POLITICAL DECISION ON THEM CANNOT BE TAKEN BEFORE MNE STANDARDS COMPLETED.

2. IN USEFUL EXCHANGE ON ACTUAL AND POTENTIAL NATIONAL MEASURES ON INWARD OPEC INVESTMENT, US STRESSED THAT ADMINISTRATION'S APPROACH, AS EXPLAINED IN WILLIAMS COMMITTEE TESTIMONY, BASICALLY CONTEMPLATES NO NEW AUTHORITY TO INTERVENE IN INVESTMENT PROCESS AND NO CHANGE IN OUR TREATMENT OF OECD AREA INVESTMENT. CHAIRMAN IN SUMMING UP, HIGHLIGHTED CONSENSUS THAT (A)
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OECD MEMBERS NOT NOW PLANNING ANY SPECIAL DISCRIMINATORY RESTRICTIONS AGAINST OPEC INVESTMENTS, (B) ANY FUTURE MEASURES WILL BE TAKEN WITHIN CONSTRAINTS OF CAPITAL MOVEMENTS CODE AND (C) WHILE NO GREAT MERIT IN "HARMONIZATION" OF POLICIES, USEFUL TO INCREASE EXCHANGES OF INFORMATION AND VIEWS OR ANY CONTEMPLATED MEASURES. CHAIRMAN ALSO EXTRACTED GENERAL STATEMENT THAT NO MEMBERS ARE PLANNING SPECIAL INCENTIVES FOR

OPEC INVESTMENTS AND SUMMED UP BY NOTING THAT SHOULD THERE BE ANY CHANGE IN THIS SITUATION COUNTRIES WILL DISCUSS THEM IN OECD. THESE CONCLUSIONS WILL BE REPORTED TO MARCH 11-12 XCSS AND MARCH 6 IEA AD HOC GROUP ON FINANCIAL QUESTIONS.

3. U. S. SUGGESTED THAT IME'S POSSIBLE CONTRIBUTION TO IEA WORK ON CONSUMER/PRODUCER DIALOGUE SHOULD CONCENTRATE INITIALLY ON ISSUES OF SECURITY FOR OPEC INVESTMENTS AND ANY INCENTIVES FOR SUCH INCENTIVES. COMMITTEE AGREED TO MEET AGAIN APRIL 28-29 TO CONSIDER MNE AND OTHER INTERNATIONAL INVESTMENT ISSUES. IME MAY ALSO MEET APRIL 7 AT OPTION OF CHAIRMAN IF XCSS OR IEA AD HOC GROUP INDICATE ACCELERATED WORK REQUIRED ON OPEC INVESTMENT ISSUES. DETAILED REPORT OF DISCUSSION FOLLOWS. END SUMMARY

4. HELGA STEEG (GERMANY) ELECTED CHAIRMAN OF INVESTMENT COMMITTEE. S. NIKLASSON (SWEDEN) ELECTED VICE CHAIRMAN.

5. MNE STANDARDS: CONSIDERATION OF ISSUES RELATING

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TO MNE'S PRESENTED IN IME(75)1, OCCUPIED FIRST DAY
WITH MOST DELS FAVORABLY DISPOSED TOWARD SEEKING TO
DEVELOP LEGALLY NON-BINDING OECD STANDARDS OF
BEHAVIOR FOR MNE'S. CONCERN WAS EXPRESSED BY NETHER-
LANDS, FRG AND US THAT AN ATTEMPT MIGHT BE MADE TO
COMPENSATE FOR REAL OR ALLEGED IMPERFECTIONS IN
NATIONAL LAWS AND REGULATIONS (REFDOC A, PARA 5)
BY IMPOSITION OF MNE STANDARDS. THESE COUNTRIES
NOTED THAT AIM OF CODE SHOULD NOT BE TO CURE "IMPERFEC-
TIONS" OF NATIONAL LAWS, BUT RATHER TO MINIMIZE
CONFLICTS RESULTING FROM LACK OF HARMONY OF NATIONAL
LAWS. GENERAL AGREEMENT WAS EXPRESSED THAT MNE'S
SHOULD BE BROADLY DEFINED, WITH PREVAILING SENTIMENT
IN FAVOR OF DEFINITION DERIVED FROM CONCEPT OF
DIRECT INVESTMENT. HOWEVER, JAPANESE DEL SUGGESTED

DEFINITION OF MNE'S IN OECD MIGHT VARY, DEPENDING UPON THE MATTER UNDER CONSIDERATION (I.E., MNE MIGHT BE DEFINED DIFFERENTLY FOR PURPOSES DATA COLLECTION AND FOR PURPOSES APPLYING STANDARDS OF BEHAVIOR). MOST DELS SUPPORTED IDEA OF APPLYING POSSIBLE STANDARDS TO MNE'S THAT OPERATED IN OECD AREA, EVEN IF THEIR OWNERSHIP OR HEADQUARTERS WERE NON-OECD AND ONLY THE PARTICULAR OPERATION WAS WITHIN OECD. IT WAS GENERALLY AGREED THAT ANY MNE STANDARDS SHOULD BE ESTABLISHED BY DECLARATION OF OECD MEMBER GOVERNMENTS WHEREBY ENTERPRISES WILL BE INVITED TO FOLLOW STANDARDS. THERE WAS NO SUBSTANTIVE DISCUSSION OF LEGAL CHARACTER OF STANDARDS BUT IT WAS CLEAR THAT ALL BELIEVED THEY WOULD NOT BE BINDING. A NUMBER OF DELS EXPRESSED CONCERN AS TO THE POSSIBLE RELATION THAT THE CODE MIGHT HAVE TO A UN CODE -- I.E WOULD IT WORK IN CONJUNCTION OR AS AN ENTIRELY SEPARATE ENTITY. LIMITED OFFICIAL USE

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IT WAS AGREED TO ESTABLISH INFORMAL WORKING GROUP (BELGIUM, GERMANY, JAPAN, NETHERLANDS, SWEDEN, UK, US) TO CONSIDER MNE STANDARDS IN GREATER DETAIL; WG WILL MEET ON APRIL 3-4.

6. GERMAN DEL (SUPPORTED BY OTHERS) STRESSED DESIRABILITY OF DEVELOPING OECD STANDARDS FOR USE IN UN BODIES WHICH CONSIDER MNE CODES OF CONDUCT. HE ARGUED THE UTILITY OF APPLYING OECD STANDARDS TO OECD-BASED MNE'S OUTSIDE OECD AREA, AND HE DOUBTED MUCH ADJUSTMENT IN OECD STANDARDS WOULD BE NECESSARY TO MAKE THEM ACCEPTABLE AS DC COUNTRY POSITION IN UN BODIES. CANADIAN DEL (AND OTHERS) QUESTIONED WHETHER REALISTIC TO EXPECT OECD STANDARDS WOULD BE ADOPTED ELSEWHERE BUT SAW EXCHANGE OF VIEWS ON INVESTMENT AND MNE ISSUES THAT WILL COME UP IN UN CONTEXT AS OF MORE IMPORTANT FUNCTIONS OF OECD INVESTMENT COMMITTEE. UK DEL NOTED NEED TO "STAY AHEAD OF ECOSOC".

7. OECD CONSULTATION PROCEDURE ON MNE'S (REFDOC A, PARAS 17-28) EXTENSIVELY DISCUSSED. THERE WAS MUCH GENERAL ENTHUSIASM FOR SOME SORT OF OBLIGATORY CONSULTATIONS OR COMPLAINT PROCEDURE. CANADIAN DEL RAISED SERIOUS QUESTIONS BY REFERRING TO POSSIBLE INCOMPATIBILITY BETWEEN HOST AND HOME COUNTRY NATIONAL LAWS WITH DISPUTE SETTLEMENT IN OECD (THIS WAS OBVIOUS REFERENCE TO US CUBA CONTROLS). US DEL EXPRESSED DOUBT OECD COULD GET VERY FAR ON CONSULTATION PROCEDURE, PARTICULARLY IF IT IS TO BE REGARDED AS WAY TO PUT TEETH IN VOLUNTARY GUIDELINES. WITH RESPECT TO SCOPE OF GUIDELINES, ONLY SUBSTANTIVE COMMENT WAS SWEDISH

SUGGESTION TO ADD GUIDELINE ON DISCLOSURE OF INFORMATION BY MNE'S. REGARDING THE PARTIES TO CONSULTATION ON MNE ISSUES, THERE WAS GENERAL AGREEMENT THAT HOST AND HOME GOVERNMENTS WOULD PARTICIPATE. THERE WAS DISAGREEMENT HOWEVER AS TO WHETHER COMPANY INVOLVED SHOULD PARTICIPATE, THOUGH MAJORITY SEEMED TO SUPPORT AT LEAST OPPORTUNITY OF COMPANY TO PRESENT VIEWS AT SOME STAGE OF THE CONSULTATIONS.

8. NON-OECD INVESTMENT: IN DISCUSSION OF MEMBER LIMITED OFFICIAL USE

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GOVERNMENTS' ATTITUDES TOWARD NON-RESIDENT INVESTMENTS, US DEL, DRAWING ON TREASURY UNDER SECRETARY BENNETT'S TESTIMONY BEFORE SENATE SUBCOMMITTEE ON SECURITIES, EXPLAINED US REVIEW OF POLICY ON INWARD INVESTMENT AND NEW MEASURES BEING TAKEN ON FOREIGN INVESTMENT IN US. ENSUING COMMENTS ON ATTITUDES OF OTHER GOVERNMENTS REVEALED RELAXED ATTITUDE TOWARD OPEC INVESTMENTS ON THE PART OF SEVERAL GOVERNMENTS (IN MANY CASES BASED ON FACT THAT THERE APPEARED TO BE NO OPEC INTEREST IN INVESTING IN THEIR COUNTRY). NUMBER OF DELS (INCLUDING CANADIAN, DUTCH, DANISH, NORWEGIAN,

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SWEDISH, UK) SPOKE OF NEED FOR OPEC INVESTMENTS AND SAID THEY DO NOT DISTINGUISH BETWEEN OPEC AND OTHER FOREIGN INVESTMENT. MOST DELS SAID THEIR GOVERNMENTS HAVE ADEQUATE MEASURES TO PROTECT AGAINST UNWANTED FOREIGN INVESTMENT. GERMAN DEL STATED THAT OFFICIAL FOREIGN INVESTMENT COULD PRESENT SPECIAL PROBLEM AND REFERRED TO SPECIFIC OPEC INVESTMENTS IN GERMANY AND NEED OF FRG TO OBTAIN EX ANTE INFORMATION ON INVESTMENTS. GERMAN DEL SAID FEDREP IS RELUCTANT TO ESTABLISH GENERAL EX ANTE REPORTING SYSTEM AND

CONSEQUENTLY IS TAKING STEPS TO ESTABLISH VOLUNTARY REPORTING SYSTEM ON MAJOR FOREIGN INVESTMENTS. FRG ALSO CONTEMPLATING REQUEST FOR SPECIFIC LEGISLATION TO PERMIT GOVERNMENT TO BLOCK FOREIGN INVESTMENTS THAT WOULD PRESENT "SEVERE PROBLEMS". BELGIAN DEL SAID HIS GOVERNMENT ALSO PLANS TO REQUEST LEGISLATIVE AUTHORITY TO ESTABLISH PRIOR NOTIFICATION FOR PURCHASE OF TEN PERCENT OR MORE. PARTICIPATION IN BELGIAN FIRMS WORTH MORE THAN ONE BILLION BELGIAN FRANCS. THIS WILL APPLY TO FOREIGN AND DOMESTIC INVESTORS. UK ALLUDED TO UK INVESTMENT BILL WITHOUT GOING INTO DETAILS.

9. AFTER PUSHING DELEGATIONS TO STATE THEIR VIEWS AND INTENTIONS WITH RESPECT TO OPEC INVESTMENTS, STEEG SUMMED UP THE CONCLUSIONS AS FOLLOWS:

- (A) NO DISCRIMINATORY RESTRICTIONS VIS-A-VIS NON-OECD INVESTMENTS ARE NOW PLANNED.
 - (B) NO MEMBER COUNTRY CONTEMPLATES SPECIAL GUARANTEES OR INCENTIVES FOR OPEC INVESTMENT.
 - (C) IF ANY COUNTRY DOES IN FUTURE CONTEMPLATE MEASURES OF THIS TYPE (A AND B), IT WILL NOTIFY OTHER MEMBER GOVERNMENTS THROUGH IMC.
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- (D) THERE IS NO GREAT MERIT IN SEEKING TO HARMONIZE OECD RESTRICTIONS ON INVESTMENTS, BUT ANY NEW INVESTMENT RESTRICTIONS MEMBERS FEEL COMPELLED TO IMPOSE IN REGARD TO OPEC INVESTMENTS SHOULD BE CONSISTENT WITH THE OECD CAPITAL MOVEMENTS CODE.

STEEG STATED SHE WOULD REPORT CONCLUSIONS TO MARCH 11-12 XCSS AND THAT REPORT ON OPEC INVESTMENT WILL BE MADE TO IEA AD HOC FINANCIAL GROUP ON MARCH 6. INVESTMENT COMMITTEE SHOULD BE NOTIFIED AND SHOULD PRESERVE LIBERAL TREATMENT OF INTRA-OECD-AREA FLOWS. NO OBJECTIONS TO THESE CONCLUSIONS EXPRESSED.

10. FUTURE WORK: DISCUSSION THEN TURNED TO ADMINISTRATIVE QUESTIONS AS TO HOW FUTURE WORK ON OIL PRODUCER INVESTMENT ISSUES SHOULD PROCEED WITHIN THE OECD. SECRETARIAT NOTED IME HAS TO DEAL WITH OPEC DIRECT INVESTMENT ISSUES AND IEA AD HOC GROUP ON FINANCIAL AND INVESTMENT ISSUES PLANS TO DRAW UPON WORK OF IME. U.S. DEL STATED THAT ATTEMPTS TO HARMONIZE OECD GOVERNMENT INVESTMENT POLICIES IN SENSE OF SEEKING COMMON DEFINITIONS OF SENSITIVE SECTORS WOULD NOT BE USEFUL APPROACH. SUCH DETERMINATION SHOULD BE LEFT TO INDIVIDUAL COUNTRIES. U.S. NOTED THE POSSIBILITY THAT VAN YPERSELE GROUP COULD HANDLE WORK ON INVESTMENT FUND IDEA. THIS

LEAVES TWO RELATED SUBJECTS ON OPEC INVESTMENTS FOR
IME:

- (A) ISSUES OF SECURITY AND GUARANTEES FOR OPEC
INVESTMENTS
- (B) INVESTMENT INCENTIVES AND DISINCENTIVES.
DISCUSSION AND COORDINATION OF MEMBER
GOVERNMENT POLICIES IN THESE AREAS WOULD
BE DESIRABLE. GERMANS AND SWISS SUPPORTED
U. S. VIEWS.

STEEG INDICATED THAT BY NEXT MEETING IME, SECRETARIAT
WILL PREPARE PAPER ON EXISTING AND PLANNED INVESTMENT
POLICY MEASURES OF MEMBER COUNTRIES.

11. INVESTMENT ISSUES: DISCUSSION OF INCENTIVES/
DISINCENTIVES AND NATIONAL TREATMENT (ANNEXES I AND
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II OF REFDOC B) SHOWED MOST COUNTRIES CONTINUE TO
RECOGNIZE THESE INVESTMENT ISSUES AS PART OF PACKAGE
WITH MNE ISSUES, BUT ALSO CLEAR
SEVERAL COUNTRIES WOULD RATHER THIS PART OF PACKAGE
WENT AWAY. U.S., DANES AND DUTCH DELS REMARKED THAT
THEIR GOVERNMENTS COULD ACCEPT INCENTIVES/
DISINCENTIVES ANNEX WITH MINOR CHANGES. HOWEVER,
MOST OTHER DELS EXPRESSED GENERAL DISSATISFACTION
WITH INCENTIVES/DISINCENTIVES ANNEX AS GOING TOO FAR
AND FOR LACKING SPECIFICITY. REMARKS INDICATE SOME
RETREAT FROM EARLIER DEGREE OF SUPPORT. FRENCH GAVE

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STRONG GENERAL RESERVATION OF USEFULNESS OF ENTIRE
EFFORT ON INCENTIVES/DISINCENTIVES STATING THERE WILL
BE FEW IF ANY SIGNIFICANT PROBLEM CASES IN THIS AREA
AND GOVERNMENTS UNLIKELY TO CHANGE POLICIES ANYWAY.
GERMAN, ITALIAN AND UK DELS EXPRESSED DIFFICULTY WITH

COVERING INTERNAL INCENTIVES THAT HAVE LITTLE OR NO EFFECT ON INTERNATIONAL INVESTMENT AND SUGGESTED INCLUSION SUCH MEASURES BE STUDIES FURTHER. SIMILAR QUESTIONS RAISED ABOUT WHETHER THERE IS INTENT TO INCLUDE MACRO-ECONOMIC POLICIES. THERE WAS GENERAL AGREEMENT ON THE DESIRABILITY OF MANDATORY CONSULTATIONS, BUT SOME ARGUED CONSULTATIONS SHOULD BE CONFINED TO SPECIFIC CASES. MOST DELS SAW NO MERIT IN DISCUSSION OF NATIONAL TREATMENT ANNEX AT THIS TIME. STEEG NOTED THAT QUESTION OF TIGHT VERSUS LOOSE FORMULATION MUST AWAIT DEVELOPMENT OF OTHER ASPECTS OF PACKAGE DEAL. IT WAS AGREED THAT BOTH ANNEXES SHOULD BE KEPT ON AGENDA OF IME AND SHOULD EVENTUALLY BE EXAMINED MORE CLOSELY, POSSIBLY IN SPECIAL INFORMAL WORKING GROUP, AS WORK FOR MNE STANDARDS OF BEHAVIOR APPROACHES COMPLETION. MEMBERS WERE INVITED TO TRANSMIT SUGGESTED DRAFTING CHANGES TO BOTH ANNEX I AND II IN WRITING TO SECRETARIAT AS SOON AS POSSIBLE.

12. NEXT MEETING IME TENTATIVELY SET FOR APRIL 28-29, ALTHOUGH DELS ASKED TO HOLD APRIL 7 OPEN FOR MEETING IF NECESSARY TO GIVE SPECIAL CONSIDERATION TO OPEC INVESTMENT ISSUE SHOULD XCSS, WHICH WILL MEET MARCH 10-12, OR IEA AD HOC GROUP WHICH MEETS MARCH 6, FEEL THAT SUCH EARLIER MEETING OF IME ON THIS ISSUE WOULD BE USEFUL.

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Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STANDARDS, COMMITTEE MEETINGS, INVESTMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 07 MAR 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975OECDP05832
Document Source: CORE
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Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 11
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
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Reference: 75 IME(7)
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 03 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 APR 2003 by KelleyW0>; APPROVED <07 APR 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: FIRST MEETING OF INVESTMENT COMMITTEE (IME) MARCH 3-4
TAGS: ENRG, EINV, OECD, XCSS, IME
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006